

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VICTOR FONSECA,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, et. al.,

Defendants.

CASE NO. 20-6255 RJB

ORDER ON PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion for Temporary Restraining Order ("TRO"). Dkt. 3. The Court has considered the pleadings filed in support of and in opposition to the motion and the remaining file. Oral argument has been requested but is not necessary to decide the motion.

On December 30, 2020, Plaintiff, an U.S. Immigration and Customs Enforcement ("ICE") detainee at the ICE Processing Center in Tacoma, Washington, filed this case, asserting his first amendment right to free speech and to petition the government and his fifth amendment right to bodily integrity are being violated in connection with the Defendants' alleged threats to

1 force feed him to end his hunger strike. Dkt. 1. The Plaintiff maintains that his hunger strike is
 2 to protest the conditions of his confinement (related to the pandemic) and the fact of his
 3 detention. *Id.* The Plaintiff now brings the pending motion, seeking an emergency order
 4 “prohibiting force feeding and threats of force feeding.” Dkt. 3.

5 **Standard on Motion.** Pursuant to Fed. R. Civ. P. 65 (b)(1):

6 The court may issue a temporary restraining order without written or oral notice
 7 to the adverse party or its attorney only if:

8 (A) specific facts in an affidavit or a verified complaint clearly show that
 9 immediate and irreparable injury, loss, or damage will result to the movant
 10 before the adverse party can be heard in opposition; and

11 (B) the movant’s attorney certifies in writing any efforts made to give
 12 notice and the reasons why it should not be required.

13 Under Rule 65 (a), “the court may issue a preliminary injunction only on notice to the adverse
 14 party.” The Defendants received notice and filed a response (Dkt. 6) opposing the motion.

15 The standard to grant either a TRO or a motion for preliminary injunction is the same.
 16 *Los Angeles Unified Sch. Dist. V. United States Dist. Court*, 650 F.2d 1004, 1008 (9th Cir. 1980).
 17 Plaintiffs seeking a TRO or preliminary injunction must establish one of two tests. *All. for the*
 18 *Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). The first test requires plaintiffs to
 19 show: (1) that they are “likely to succeed on the merits,” (2) that they are “likely to suffer
 20 irreparable harm in the absence of preliminary relief,” (3) “the balance of equities tips in [their]
 21 favor,” and (4) “an injunction is in the public interest.” *Coffman v. Queen of Valley Med. Ctr.*,
 22 895 F.3d 717, 725 (9th Cir. 2018)(citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7
 23 (2008) (internal quotation marks omitted)). Under the second variant of the Ninth Circuit’s test
 24 for a TRO or preliminary injunction, the “sliding scale” version of the *Winter* standard, “if a
 plaintiff can only show that there are serious questions going to the merits—a lesser showing

1 than likelihood of success on the merits—then a preliminary injunction may still issue if the
2 balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are
3 satisfied.” *All. for the Wild Rockies*, at 1217 (*internal quotation marks and citations omitted*).

4 **Decision on Motion for TRO.**

5 The Plaintiff’s motion for a TRO (Dkt. 3) should be denied. The Plaintiff has failed to
6 make a sufficient showing on the second prong of both Ninth Circuit tests - that he is “likely to
7 suffer irreparable harm in the absence of preliminary relief.” While the Plaintiff asserts that the
8 Defendants have threatened to force feed him, he does not dispute that they need a court order to
9 do so. The Defendants indicate in their response that they have no plans to force feed the
10 Plaintiff at this time. Dkt. 6. They state that while his eating patterns still constitute a hunger
11 strike under their policies, the Plaintiff drinks Boost (a form of liquid nutrition) and occasionally
12 eats peanut butter and jelly sandwiches. *Id.* Further, the parties dispute whether the Defendants
13 have threatened to force feed the Plaintiff. Even if the Defendants have threatened him, there is
14 no indication that the Plaintiff has altered his conduct as a result. While not definitive, his
15 continued commitment to his hunger strike undermines the Plaintiff’s assertion that an
16 emergency order is necessary at this time. The Plaintiff has not shown that he is “likely to suffer
17 irreparable harm in the absence of [the] preliminary relief” that he seeks here.

18 Additionally, it is unclear whether the Plaintiff will succeed on the merits of his claims or
19 whether there are serious questions going to the merits. The Defendants argue that the Plaintiff’s
20 claims are not yet ripe (relying on their assertions that they have no current intention to force
21 feeding the Plaintiff and have not threatened to do so). Dkt. 6. The Court should not rule on this
22 issue because the motion for a TRO should be denied on other grounds and because this issue
23 has not been fully briefed (it was raised in a response). Further, the Defendants have not moved
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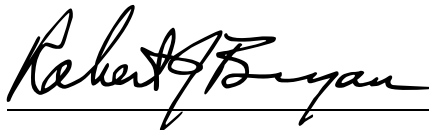
1 to dismiss the for lack of ripeness. Even if they had, it appears that the Plaintiff's claims for
2 relief in the Complaint include more than just the threat of force feeding, for example, placing
3 the Plaintiff in isolation. Additionally, there appears to be a dispute as to whether the Defendants
4 have been threatening the Plaintiff with force feeding. "The ripeness doctrine is drawn both
5 from Article III limitations on judicial power and from prudential reasons for refusing to exercise
6 jurisdiction." *Wolfson v. Brammer*, 616 F.3d 1045, 1057 (9th Cir. 2010)(*internal quotation*
7 *marks and citation omitted*). "Through avoidance of premature adjudication, the ripeness
8 doctrine prevents courts from becoming entangled in abstract disagreements." *Id.* It is not yet
9 clear that the disagreement at issue is "abstract;" it is also not clear that the Plaintiff is likely to
10 succeed on the merits or that there are serious questions going to the merits. The Court need not
11 reach the remaining prongs of the test for a TRO.

12 The motion for TRO (Dkt. 3) should be denied.

13 **IT IS SO ORDERED.**

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
15 to any party appearing *pro se* at said party's last known address.

16 Dated this 4th day of January, 2021.

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18 ROBERT J. BRYAN
19 United States District Judge
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